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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:
 USA COMMERCIAL MORTGAGE COMPANY,
 Debtor.

In re:
 USA CAPITAL REALTY ADVISORS, LLC,
 Debtor.

In re:
 USA CAPITAL DIVERSIFIED TRUST DEED
 FUND, LLC,
 Debtor.

In re:
 USA CAPITAL FIRST TRUST DEED FUND, LLC,
 Debtor.

In re:
 USA SECURITIES, LLC,
 Debtor.

Affects:
☐ All Debtors
☐ USA Commercial Mortgage Company
☐ USA Securities, LLC
☐ USA Capital Realty Advisors, LLC
☒ USA Capital Diversified Trust Deed Fund, LLC
☐ USA First Trust Deed Fund, LLC

Case No. BK-S-06-10725 LBR
 Case No. BK-S-06-10726 LBR
 Case No. BK-S-06-10727 LBR
 Case No. BK-S-06-10728 LBR
 Case No. BK-S-06-10729 LBR

Chapter 11

Jointly Administered Under
 Case No. BK-S-06-10725-LBR

**REPLY TO RESPONSE TO
 OMNIBUS OBJECTION OF POST-
 EFFECTIVE DATE USA CAPITAL
 DIVERSIFIED TRUST DEED FUND,
 LLC, TO PROOFS OF INTEREST**

Hearing Date: July 27, 2007
 Hearing Time: 9:30 a.m.

Courtroom: 1

Post-Effective Date USA Capital Diversified Trust Deed Fund, LLC ("Diversified"), by and through its counsel noted above, hereby submits its Reply to the Response to Omnibus Objection of Post-Effective Date USA Capital Diversified Trust Deed Fund, LLC To Proofs of Interest (the "Response") filed by Margaret B. McGimsey, Bruce McGimsey, Sharon

1 McGimsey, Jerry McGimsey and Johnny Clark (hereinafter, jointly referred to as the
2 “McGimseys”).

3 For its Reply, Diversified states that the Omnibus Objection of Post-Effective Date USA
4 Capital Diversified Trust Deed Fund, LLC To Proofs of Interest (the “Objection”) filed by
5 Diversified, which included objections to several Proofs of Interest filed by the McGimseys,
6 shifted the burden of ultimate persuasion as to the validity and amount of the McGimseys’
7 respective equity interests in Diversified *to the McGimseys*. *In re Consolidated Pioneer Mortg.*,
8 178 B.R. 222, 226-227 (B.A.P. 9th Cir. 1995), *aff’d*, 91 F.3d 151 (9th Cir. 1996) (quoting *In re*
9 *Allegheny International, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). The Response, consisting
10 of three sentences, fails to satisfy the McGimseys’ burden. The Response offers no evidence to
11 satisfy the McGimseys’ burden of persuading the Court why Diversified’s books and records are
12 incorrect – other than to attach the single-page Proofs of Interest already filed in the case. *See*
13 *id.*, at 227 (holding that because the proof of claim did not allege sufficient facts to support the
14 claim, the proof of claim was disallowed)

15 Further, the Response offers nothing to controvert the Objection on the point that several
16 of the McGimseys’ proofs of interest were filed in duplicate. Diversified reiterates that holders
17 of equity interests should not be allowed multiple recoveries for the identical interests. 11
18 U.S.C. § 502(b)(1); *see Fine Organics Corp. v. Hexcel Corp. (In re Hexcel Corp.)*, 174 B.R.
19 807, 811 (Bankr. N.D. Cal. 1994) (noting the bankruptcy policy “intended to protect the limited
20 assets of the estate from duplicative claims”); *In re Finley, Kumble, Wagner, Heine, Underberg,*
21 *Manley, Myerson & Casey*, 160 B.R. 882, 894 (Bankr. S.D.N.Y. 1993) (“to allow one creditor to
22 assert two dollars in claims for every one dollar of loss from the same debtor violates principles
23 of ratable distribution and offends notions of uniform treatment for creditors”) (quotations
24 omitted).

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1 Accordingly, Diversified respectfully requests that the Court sustain the Objection and
2 grant Diversified the relief requested in the Objection as to such interests.

3 DATED this 25th day of July 2007.

4 **BECKLEY SINGLETON, CHTD.**

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